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Service Tax

&

Budget-2011

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Service Tax & Budget-2011

The Finance Minister presented the Union Budget 2011 amidst low expectations of any major indirect tax policy reforms due to lack of any concrete understanding between the Central Government and some of the State Governments. Certainly, the Target date for implementation of Goods and Service Tax ("GST") with effect from 1st April, 2011 is missed and further no new implementation date has been proposed. However Finance Minister clarified that Government expects to progress in implementing the GST and expressed Government's commitment to draft the model GST legislation with the establishment of a strong IT infrastructure, these are some of the welcome steps. Further in order to fulfill its commitment, the Government of India has already introduced a Constitution Amendment Bill in the Lok Sabha to facilitate implementation of GST. We may expect more activity on the tax and regulatory reforms in the current fiscal year in view of the Government's intention to implement the DTC and the GST.

This topic refers the main highlights of budget-2011 with reference to the Service Tax in a very simple manner emphasizing on the changes effected under specific heads for better understanding of the relative changes proposed in the Budget. Further all major changes in service tax, up to 31st March, 2011, in connection with budget proposals have been updated.

1. Rate of Service Tax

No change has been proposed in the effective service tax rate of 10.3%. It was anticipated that in order to bring down fiscal deficit, the Finance Minister may propose hike in rate of service tax, but he decided otherwise. This move is very positive keeping in view of the present compulsions of the Central Government.

2. Introduction of Two New Taxable Services (Effective date to be notified on passing of Fin. Bill 2011).

Two more services have been added in the existing list of 115 services liable for service tax.

- A. Services provided by air conditioned restaurants with licenses to serve liquor; and
- B. Services provided by hotels, guest houses, etc. with respect to providing accommodation.

3. Amendments (Expansion/ Modification) in the Scope of Existing Services (Effective date to be notified on passing of Fin. Bill 2011).

S. No.	Name of the Service	Relevant Section*	Amendments (Expansion/ Modification)
1	Authorized Service Station's Services	65(105) (zo)	The existing definition of " Authorized Service Station " has been extended to " Any person ". The Definition of Taxable Services has been amended and the words " motor car, light motor vehicle or two wheeled motor vehicle " have been substituted with the words " any motor vehicles other than motor vehicles meant for goods carriage or three wheeler scooter auto rickshaw ".
2	Legal Consultancy Services	65(105) (zzzzm)	The scope has now been extended to cover: <ul style="list-style-type: none"> • Services provided by business entities to individuals; • Representational services before any Court, Tribunal or an authority, to be provided by any person to a business entity; and • Services provided by arbitrators to business entities.
3	Support Services for Business or Commerce	65(105) (zzzq)	The definition of Support services for business or commerce has been expanded to include " operational or administrative assistance in any manner ".

4	Life Insurance Services	65(105) (zx)	The scope of this service has been expanded and shall now cover all types of services including services in relation to the management of investments.
5	Commercial Training or Coaching Services	65(105) (zxc)	This service will cover all coaching and training services with exemptions only for pre-school coaching and coaching for degrees/ diplomas/ other qualifications recognized by law.
6	Club or Association Services	65(105) (zzze)	The scope has been stretched to even cover services provided to non-members as well.

*Relevant Section of Finance Act, 1994.

4. Sale of foreign currency including services of money changing (Applicable w.e.f. 1st April, 2011):

Service tax on exchange of foreign currency shall be levied in the following manner:

- A. At the rate of 0.1% of the foreign currency exchanged up to INR 100,000, subject to the minimum amount of INR 25;
- B. INR 100 and 0.05 % of the foreign currency exchanged exceeding INR 100,000 and up to INR 10,00,000; and
- C. INR 500 and 0.01% of the foreign currency exchanged exceeding INR 10,00,000 , subject to maximum amount of INR 5000.

5. Air travel services (Applicable w.e.f. 1st April, 2011):

Service Tax has been increased:

- A. By 50% on economy class air travel , both Domestic and International (existing INR 100 Domestic travel and INR 500 International travel) and
- B. To 10% (from existing INR 100) on other classes of domestic travel.
- C. No change in International travel in other classes.
- D. Service Tax is levied on gross value of the air ticket.

6. Business exhibition services(Applicable w.e.f. 1st March, 2011):

Business exhibition services for holding an exhibition outside India will be exempt from service tax levy.

7. Works Contract (Applicable w.e.f. 1st March, 2011):

- A. Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 will be amended to restrict Cenvat credit to 40% of tax paid on input services relating to erection, commissioning, installation of commercial or industrial construction and construction of residential complex. This benefit will be available where service tax has been paid by the vendor on full value of such service after availing Cenvat credit on inputs.
- B. Works Contract services wholly provided within an airport or port will be exempt from service tax.

8. Special Economic Zone:

- A. Criteria for the determination of “wholly consumed” services have been specifically prescribed. Now, wholly consumed services in a SEZ will be linked with Export Rules for obtaining exemptions and no service tax is required to be paid if the services are “wholly consumed” within SEZ. The Refund for the remaining services (which are not wholly consumed) would be available on pro rata basis, i.e. ratio of SEZ turnover to total turnover. (Applicable w.e.f. 1st March, 2011).
- B. Changes have been made in the Credit Rules to provide that no credit would need to be reversed if the services have been provided to SEZ unit for its authorized operations. (Applicable w.e.f. 1st April, 2011).

9. Services of transportation of goods- (Applicable w.e.f. 1st April, 2011)

- A. Exemption has been provided from service tax on services of transportation of goods by air/ road/ rail to a person located in India when the goods are transported from a place outside India to a place outside India.

- B. Transportation of goods by air, the air freight charges included in value of imported goods for customs duty purposes, will be exempt.

10. Introduction of Point of Taxation Rule (Applicable w.e.f. 1st April, 2011)

- A. The point of taxation for the services shall be:
- The date when the invoice for the service provided or to be provided is issued. However where the invoice is not issued within fourteen days of completion of the service, the point of taxation shall be date of completion of such period.
 - The date when the service provider, receives a payment, to the extent of such payment, before the completion of fourteen days period from the conclusion of the service.
- B. The point of taxation in respect of specified services or persons shall be the date on which payment is received or made. The details of specified services or persons are as:
- The services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;
 - The persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;
 - Individuals or proprietary firms or partnership firms such as CAs, CSs, CWAs, Interior Designers and Architects etc providing taxable services.
- However where payment is not received within the specified periods, then the point of taxation shall be determined in the manner, as if these rules do not exist.
- C. Where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment, whichever is earlier.

11. Membership fee collected by associations or chambers:

Membership fee collected by commerce or industry associations/chambers during the period 16th June, 2005 to 31st March, 2008 will be exempt from levy of the service tax.

12. Transportation of Passengers:

Inter state or intra state transportation of passengers, (excluding tourism), in a vehicle bearing contract carriage and tourist vehicle permit for the period 1st April, 2000 to 6th July, 2009 will be exempt from levy of service tax.

13. Audit:

Assessees (individuals and propriety firms) with a turnover of up to INR 60,00,000 shall not be subjected to audit.

14. Miscellaneous other changes proposed in the Budget-2011

(Applicable w.e.f. 1st March, 2011)

- A. Value of telecommunication services will be the gross amount paid by the person (ultimate user or subscriber) to whom the service is provided by the telegraph authority.

(Applicable w.e.f. 1st April, 2011):

- B. Adjustment of service tax paid will be allowed if the services are not subsequently provided.
- C. Export Rules will be amended as follows:
- For determination of export of specified services, the performance based criteria shall be changed to "location of recipient of service".
 - Location of recipient of service criteria for determining export of "health services" and "rail travel agent services" will be changed to "performance based criteria".
 - Location of recipient of service criteria for determining export of "preferential location services by builders" will be changed to "location of immovable property".

Corresponding changes will also be made in the Import Rules.

- D. Service Tax Rules will be amended as follows:
- A new rule, 5B, has been proposed to include that the applicable rate of tax shall be the rate prevailing at the time when the services deemed to have been provided.
 - Limit of self adjustment of service tax has been raised from INR 1,00,000 to INR 2,00,000.

E. Cenvat Credit Rules shall be amended as follows:

- Definitions of “input” and “input service” has been substituted.
- “Input service” will cover services used for providing output service and other specified services.
- The phrase “activities relating to business such as” will be deleted from the definition of “input service” and specific exclusions will be provided for services such as construction of building or civil structure, outdoor catering, rent-a-cab services, and life / health insurance services to employees.
- Definition of “exempted service” has been amended to include trading and taxable services which are partially exempted.
- Principles for valuation exempted services prescribed for the purpose of availment of pro rata Cenvat credit. In case of trading, such value will be the difference between sale price and purchase price of the goods traded.
- For availment of Cenvat credit, additional option to maintain separate accounts only in respect of inputs along with pro rata allocation for input services will be available.
- Amount payable on exempted services under the option to avail full Cenvat credit will be reduced from 6% to 5% of the value of exempted services.
- Banking companies or financial institutions, including NBFCs, providing banking and financial services will be obligated to pay an amount equal to 50% of Cenvat credit availed. For services related to life insurance or management of ULIP, such amount will be equal to 20% of credit availed.
- Rule 6(5) of the Cenvat Credit Rules allowing full Cenvat credit on specified services will be deleted.
- Where payment for an input service, or a part thereof, is returned, the person availing credit on such input service will need to proportionately reverse the Cenvat credit availed.

15. Penalties:

The following changes have been proposed in the penal provisions:

- A. Interest for delayed payment of service tax has been increased to 18% per annum and 15% per annum for tax payers with turnover below INR 6 million (From the current Interest rate of 13% per annum).
- B. Maximum penalty for delay in filing of return has been increased to INR 20,000 (From the current penalty of INR 2,000).
- C. Penalty for failure to pay service tax has been reduced to INR 100 a day or 1% a month, subject to a maximum of 50% of service tax payable.
- D. Penalty for any other contravention will be increased to INR 10,000 (From the current penalty of INR 5,000).
- E. Provision of the first charge on the property of assessee has been inserted in respect of amounts due.
- F. Provisions relating to the prosecution have been re-introduced for offences like performance of services without raising invoices, availment of Cenvat credit without receipt of inputs/ input services, etc.
- G. Penalty for suppressing value of taxable services:
 - where taxpayer has not captured the true and complete information in the specified records – Penalty has been reduced from “an amount up to twice the amount of tax” to “an amount equal to the tax” and
 - Where taxpayer has captured the true and complete information in the specified records –Penalty has been prescribed at 50 percent of the tax amount.